IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.930 OF 2005

Shri Dashrath Bhaktisar Pathak, since deceased through his legal heirs and representatives:
Shri Rambabu Dashrath Pathak & Ors. : Petitioners
(Orig. Plaintiff)

V/s.

Shri Ramdayal Dharamjit Sharma : Respondent
(Orig. Defendant)

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Mr.S.H. Joshi for the petitioners.
Mr.Jitendra Sachder for the respondent.

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**CORAM : S.A. BOBDE, J.**

August 8, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Sachder, learned counsel, appears and waives service of rule on behalf of the respondent.

Heard by consent.

2. This petition is directed against the order of the Joint Civil Judge, Junior Division, Nasik, rejecting the

petitioner’s application for amendment of his plaint.

3. The petitioner-plaintiff has filed a suit against the defendant that the sale deed executed in favour of the defendant is false and fabricated and the same should be set aside. Pending suit, the petitioner made an application purporting to seek certain details as to why the sale deed in favour of the defendant is false. The plaintiff sought to add para 8A by which he wanted to insert, inter alia, the statements that the sale deed dated 24.4.1965 is not signed by Dashrathi Bhaktisar Pathak i.e. the power of attorney’s father. In addition, the plaintiff sought to introduce the averments that he had constructed eight rooms which the defendant illegally let out. On that basis, the plaintiff also took rent in respect of the said room and an injunction restraining the defendant from illegally collecting rent. This application has been rejected. There is no reason in law why this application ought to have been rejected. The learned counsel for the respondent urged that it changes the nature of the suit. This submission is not acceptable. The suit essentially remains a suit for a declaration that the sale made in favour of the defendant is illegal. But by the present amendment, the petitioner-plaintiff has been allowed to seek recovery of

sum of money which the defendant is making out of the illegal transfer of the land.

4. In the result, the amendment is allowed. The rule is made absolute in the aforesaid terms. Needless to say that the petitioners shall be liable to pay additional Court fees, if any.

Sd/-

S.A. BOBDE, J.